b. the investments necessary to launch and thereafter operate Outdoor Life and Speedvision;

c. the fundamental importance of widespread penetration to the Network's ability to become and remain commercially viable; and

d. the profound impact on Outdoor Life and Speedvision that would be caused by application of the Commission's proposed closed captioning rules to low-penetrated, start-up networks such as Outdoor Life and Speedvision.

<u>The Networks And Their Programming</u>

6. There are presently over 300 programming networks competing for carriage on the nation's MVPDs, approximately 135 of which are national basic cable network like Outdoor Life and Speedvision. In order to attract and retain subscribers, niche programmers must target a segment of the population whose programming needs have not yet been adequately filled, and provide programming of the type, quantity and quality that their viewers desire.

7. The demographics of the viewing markets for Outdoor Life and Speedvision were studied thoroughly prior to launching these channels. It was determined that viewing needs in the Networks' respective interest areas were underserved. For example, according to surveys conducted by Beta Research Corp., Outdoor Life was rated number one of 18 emerging networks, was the second most requested network among all adults ages 18 to 49, and was the third most requested among all non-subscribers ages 18 to 34.

8. Speedvision and Outdoor Life were created to fill the unserved, or underserved, needs and interests of their respective viewers. No other networks offer the breadth, depth or quality of coverage of these interests as do Outdoor Life and Speedvision.

9. Both Speedvision and Outdoor Life are single-feed networks that deliver programming on a 24-hour basis. Each network will offer a total of 8,760 hours of programming in 1997, nearly double the amount delivered by any of the major broadcast networks.

Outdoor Life

10. Outdoor Life is a niche programming network that is devoted to outdoor recreation, conservation, wilderness and adventure. Its programming focuses on outdoor and environmental activities and interests, such as wildlife and wilderness conservation, fishing, mountaineering, hunting, camping, backpacking, mountain biking, white water sports and skiing. Outdoor Life's programming includes five genres: magazine and lifestyle series (44 percent of programming hours in 1997), instructional and how-to series (29 percent), documentary programs (19 percent), event coverage (6 percent) and news and information (1 percent).

11. Examples of Outdoor Life's new and original programming include: "Nature's Best," which is produced by National Wildlife Productions and explores the beauty and diversity of the outdoor world through the eyes of the world's premiere photographers; "Fleeing Extinction," a documentary that investigates the status of various endangered species; "Environmental Forum," a weekly public affairs program produced in Washington, D.C. that examines environmental issues; "Scouting Challenge," a monthly program produced in conjunction with the Boy Scouts of America, features the broad array of scouting programs and activities; and "Eco-Forum," a half-hour weekly program produced in association with the Massachusetts Institute of Technology and the John F. Kennedy School of Government at Harvard University, which will examine the impact of business and industry on the environment.

12. Outdoor Life's event coverage is highlighted by more than 100 hours of alpine

sports, including skiing, snowboarding and cross-county skiing. Events to be covered in 1997 include the FIS Cafe de Colombia World Cup Alpine Events, the 1997 Nordic Championships and the 1997 Iditarod Dogsled Race.

Speedvision

13. Speedvision is a 24-hour network offering never-before-viewed programming targeted to boating, aviation, and automobile/motorcycle enthusiasts. Speedvision has six main programming genres: news and information, magazine and lifestyle programs, event coverage, historical and documentary programs, how-to programs and manufacturer-produced programs. Speedvision's non-event coverage comprises approximately eighty percent of its program lineup. Examples of Speedvision's programs include "Planes of Fame," a historical series on the pilots and planes of today and days gone by; "Wild About Wheels," a 26-part series that explores the relationship between man and machine, industrial design and product success in the marketplace; "Sailor's Log," an 18-part series that teaches the basics of sailing; and "American Thunder," an expo on the American motorcycle lifestyle.

14. Speedvision's event coverage comprises approximately 20 percent of its programming. Many of the events covered on Speedvision are not covered by other networks. Examples of Speedvision's event coverage include: INSA World Sports Car Racing; NASCAR in-car coverage, in which an entire NASCAR race is covered entirely from behind the wheel; NASCAR qualifying; SCCA Trans-Am Racing; and "The 24 Hours of Le Mans," transmitted exclusively in the United States by Speedvision live from the streets of Le Mans, France. Speedvision will provide an estimated 78.5 hours of live event coverage in 1997.

15. In addition to these programs, Speedvision expects to be providing "Speedvision

News," a current news and information program, seven nights a week beginning in the fourth quarter of 1997. The addition of this program will give Speedvision's viewing audience the opportunity to receive news and information on a daily basis that is not exhibited on any other cable or broadcast television media.

Investment To Launch And Operate A Quality Programming Network

16. Launching a quality programming network requires a tremendous financial investment. Under the Outdoor Life and Speedvision business plans, the networks will not break even financially until their fifth years of operation, respectively. By that time, the Networks will have invested more than $180 million combined.

17. A principal element of this investment is the Networks' programming, which is of a particularly high quality. Outdoor Life and Speedvision are committed to maximizing the quality of every aspect of their programming. Outdoor Life will spend in excess of $14 million in 1997 to produce and acquire original programming, and even more in successive years. Similarly, Speedvision will spend in excess of $16 million on original programming in 1997, and more in later years. Each original one hour program produced on Outdoor Life averages $25,000-30,000, and some programs are substantially more expensive. For example, it costs $100,000 to produce each one-hour special in Outdoor Life's "Adventure Quest" series. A typical three-hour live event on Speedvision costs between $150,000 to $200,000 to produce. While terribly expensive, Outdoor Life and Speedvision have determined that original, differentiated programming is the best way to serve the needs and interests of, and to attract and retain, their viewers.

18. Outdoor Life's and Speedvision's costs are further increased due to the Networks'

commitment to maximizing the quality of every aspect of their programming. For example, both networks feature programs that are filmed at distant locations around the world, which substantially increases their programming production and acquisition costs. Likewise, both networks have invested in state-of-the-art digital production facilities. These and other attributes account not only for the recognized excellence of the Networks, but also for their substantial programming expenses, which will exceed $60 million by the end of the Networks' second years of operation.

Distribution And Revenues Necessary For Commercial Viability

19. Basic cable networks depend on a combination of affiliation fees and advertising revenues to attain commercial viability. Outdoor Life's and Speedvision's projections show that they must each obtain distribution of 20 to 25 million subscribers before they will turn the corner to profitability. This is a particularly daunting task for a niche programming networks like Outdoor Life and Speedvision, whose target audiences are far narrower than those of general entertainment networks. Consequently, any condition that further restricts the Networks' ability to gain, or retain, carriage on MVPDs and generate revenue from affiliation fees jeopardizes the Networks' chances of survival.

20. Distribution is pivotal in generating not only affiliation fees, but also advertising revenue, which is directly tied to subscriber penetration. Speedvision and Outdoor Life need to attain significant advertising revenues to become commercially viable. Each network needs a penetration of at least 15, and in most cases, 20 million subscribers to attract national advertisers such as soft drink companies, soap and detergent companies, automobile manufacturers, and gasoline, oil and tire companies. Only then will the Networks achieve distribution capable of

generating a sustained level of advertising revenues sufficient to make the Networks commercially viable over the long term.

21. The Commission's proposed closed captioning rules will adversely impact Outdoor Life and Speedvision in any of several different ways. As explained below, the Networks will be forced either to reduce the quantity or quality of their programming in order to free up funds to pay for the substantial costs of captioning, or simply decline to caption any significant amount of programming. Any of these scenarios will make it even more difficult for Speedvision and Outdoor Life to gain carriage on cable systems. The Networks' distribution will falter, and they will be unable to grow the subscriber base necessary to produce advertising and affiliation revenues sufficient to sustain their operations.

Impact Of The Commission's Proposed Captioning Rules On Outdoor Life And Speedvision

22. Even though the Commission's proposed captioning rules place the legal responsibility for captioning on MVPDs, the Commission has recognized that programming networks such as Outdoor Life and Speedvision will be forced to bear the cost of captioning. Indeed, start-up, niche programming networks such as Outdoor Life and Speedvision, over which MVPDs have tremendous bargaining power (as opposed to highly-penetrated, well-established networks, such as ESPN),[1] will inevitably be forced to bear the brunt of the proposed captioning requirements.

23. The Commission estimates that the cost to caption prerecorded programming such

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[1] Start-up, niche programming networks such as Outdoor Life and Speedvision inherently cater to smaller audiences than general programming networks such as CNN, ESPN, HBO or Disney, and have yet to achieve viewer loyalties on par with established networks that have had years to develop strong followings.

as that provided by the Networks[2] is between \$800 and \$2,500 per hour.[3] Using a conservative figure of \$1,700 per hour,[4] Outdoor Life and Speedvision estimate that the cost to caption their programming could be as much as \$3 million each per year. This figure represents approximately 22 percent of Outdoor Life's programming budget for 1997 and 19 percent of Speedvision's 1997 programming budget. Even if phased-in over the Commission's proposed eight-year transition period, the cost of captioning the Networks' programming will be nearly \$27 million,[5] which is 15 percent of the entire investment originally budgeted for development of the Networks and 9 percent of the Networks' projected programming budgets for that period. Indisputably, the financial strain that mandated captioning will place on Outdoor Life and Speedvision will be staggering.

24. Start-up networks such as Outdoor Life and Speedvision, however, are in the worst position to absorb the tremendous cost of the proposed captioning rules. Start-up networks, operating at a loss for a number of years, will be forced to divert scarce funds from the creation and acquisition of new and original programming, resulting in an overall reduction in the quality

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[2] Currently, all of Outdoor Life's and the vast majority of Speedvision's programming is prerecorded. Thus, the estimated rate for prerecorded programming was applied uniformly.

[3] NPRM ¶ 20.

[4] If required to caption, the Networks would provide quality captioning that is consistent with the overall high-quality of their programming. Thus, the Networks conservatively estimate that their hourly captioning costs would exceed the Commission's base-level estimate of \$800 per hour, but fall below the high-end estimate of \$2,500.

[5] Computed in the following manner: \$27 M = (2 x \$3 M x 1/8)[for Year 1] + (2 x \$3 M x 1/4)[for Year 2] + (2 x \$3 M x 3/8)[for Year 3] + (2 x \$3 M x 1/2)[for Year 4] + (2 x \$3 M x 5/8)[for Year 5] + (2 x \$3 M x 3/4)[for Year 6] + (2 x \$3 M x 7/8)[for Year 7] + (2 x \$3 M x 1)[for Year 8]. This analysis conservatively assumes that captioning requirements would be phased-in evenly over eight years.

and quantity of the networks' programming. Speedvision, for example, may be required to curtail its coverage of racing or other competition events and Outdoor Life may be forced to cut back its coverage of alpine events. The Networks may also be forced to rely on lesser quality crews in covering these events and/or reduce the number of camera and sound locations used to cover these events. Outdoor Life may be foreclosed from operating its Washington studio facilities, which are maintained exclusively for the purpose of covering legislative and administrative developments affecting the environment and the interests of outdoor enthusiasts. In addition, the Networks might be forced to decrease their amount of first-run programming and rely more heavily upon repeated programming. Moreover, a diversion of funds for captioning might also force the Networks to forego enhancements to their production facilities or postpone or cancel planned new programming, such as "Speedvision News." Any of these consequences will diminish the viewing experience for all subscribers and will result in decreased affiliate and subscriber satisfaction.

25. Captioning would be particularly burdensome, expensive, or an inefficient use of scarce resources for certain programming on Outdoor Life and Speedvision. For example, it is likely that real-time "stenocaptioning" technique would be required to provide closed captioning for Speedvision's live programming. But as the Commission has recognized, the pool of qualified and trained real-time stenocaptioners is very limited. This situation is likely to be exacerbated as more programmers are required to provide captioning. Moreover, both Networks' event coverage has very limited repeat value, *i.e.*, "shelf life." Thus, devoting substantial resources to captioning this material would be particularly inefficient. Finally, closed captioning would add much cost, but little additional value, to the Networks' programming that is largely visual in

nature, *i.e.*, event coverage and outdoor programming in general.

26. Nor will it be possible for Outdoor Life or Speedvision to pass along the enormous cost of captioning to MVPDs in the form of increased affiliation fees, for MVPDs' carriage decisions are price elastic, and price increases due to closed captioning costs would make Outdoor Life and Speedvision less attractive to MVPDs compared to larger, better established profitable networks that would be able to absorb all or a significant part of the cost of closed captioning. Without doubt, price increases spurred by required closed captioning would further retard the Networks' ability to maintain and increase its penetration. Nor can advertising rates simply be increased. To do so would simply drive advertisers to other networks and/or other media. As a result, funds needed to provide captioning would necessarily come out of the Networks' programming budgets.

27. Similarly, Outdoor Life and Speedvision cannot force their program suppliers to absorb captioning costs. The programming purchased by the Networks is unique and is available only from a limited number of sources. If the Networks' suppliers are forced to caption, they will simply pass along these increased costs in the form of price increases, which Outdoor Life and Speedvision will have to absorb.

28. Yet, if start-up networks such as Outdoor Life and Speedvision do not caption a substantial portion of their programming, they will be severely disadvantaged in their ability to compete for scarce channel capacity. MVPDs, seeking to fill their few remaining channels, will naturally give preference to those networks that will help satisfy the MVPDs' legal responsibility for meeting captioning quotas. MVPDs will be reluctant to drop existing channels that have developed subscriber loyalty, even if those channels do not have substantial amounts of captioned

programming. Thus, MVPDs will look to new networks to fill their captioning quota requirements now and in the future.

29. Larger, more established networks will have the resources to caption significant amounts of their programming. Thus, the Commission's proposed rules will have the undesirable and unintended effect of assisting in the entrenchment of established networks, while diverse, niche networks are further hindered in their ability to gain carriage. The proposed rules therefore threaten overall diversity in programming.

30. Not only will the proposed captioning requirements impede the Networks' ability to increase subscriber penetration, they will place Outdoor Life and Speedvision at serious risk of being displaced (or "bumped") from MVPDs on which they are presently carried. For if the Networks are forced to reduce either the quality or quantity of their programming, or to caption less programming than other networks, it is highly likely that the Networks would be bumped from systems and replaced by more established networks that are financially better able to substantially caption their programming and to do so without any reduction in the quality or quantity of that programming. Outdoor Life and Speedvision would not be able to recover from the adverse impact that decreased penetration would have on their ability to effectively market their programming and sell advertising time. Such a fate would not only destroy the multi-million dollar investment made so far in the Networks, but would also jeopardize the jobs of the Networks' employees.

31. Given the enormous costs of producing and acquiring new and original programming, most networks rely heavily on library programming in their formative years. Outdoor Life and Speedvision are no exceptions, as high-quality library programming targeted

to the meet the specialized needs and interests of our subscribers constitutes more than 50 percent of the Networks' programming. These are not merely tired re-runs of programs that television viewers have seen numerous times before. Instead, they have been carefully selected from television and film archives precisely because of their originality, quality and entertainment and/or instructional value. Some of this material has never before been televised in the United States; and some vintage footage has not been telecast in decades. Outdoor Life and Speedvision would be extraordinarily burdened by a requirement that a significant amount of this library programming be closed captioned within the Commission's proposed transition period. Indeed, such a requirement would likely force Outdoor Life and Speedvision to forego this distinctive and diverse programming in favor of captioned programming that is already widely distributed -- at a direct cost to our overall quality and diversity of programming.

32. The Networks appreciate the benefits of captioning and support the worthy goal of improving access by persons with hearing disabilities to video programming. Indeed, new programming networks such as Outdoor Life and Speedvision have a strong market-based incentive to expand their distribution as much as possible and appeal to as many viewers as possible, including those with hearing disabilities. However, the Commission should recognize the economic plight of start-up networks for whom captioning is simply not commercially feasible at the present time. Outdoor Life and Speedvision look forward to the day when they will be financially capable of making captioned programming available to their valued subscribers, of whom persons with hearing disabilities constitute a sizeable portion. Unfortunately, given current market conditions and captioning costs, this will not occur until the Networks reach the minimum level of distribution for commercial viability -- 20 million

subscribers each. Until that time, the Commission should refrain from imposing this substantial burden on the Networks, especially because our programming is often highly visual in nature, *i.e.,* Outdoor Life's scenic outdoor programming, or often contains highly graphical content, *i.e.,* Speedvision's extensive use of graphics during automotive events.

33. For these reasons, the Networks urge the Commission not to adopt the closed captioning rules as presently proposed. If the Commission chooses to enforce mandatory captioning requirements, it must, as proposed in the accompanying Comments, exempt by regulation all video programming distributed by low-penetrated networks until such time as they serve at least 20 million subscribers, the minimum level necessary to attain commercial viability. Outdoor Life and Speedvision, at early stages in their development, simply cannot afford to absorb the tremendous cost of captioning substantial amounts of their programming. An exemption for new programming networks based on low subscriber penetration is the only way that the Commission can avoid the disparate and potentially disastrous effects that its proposed captioning rules will have on start-up, niche programming services such as Outdoor Life and Speedvision.

I, Roger Williams, certify, under penalty of perjury, that the foregoing information is true and correct to the best of my knowledge, information and belief.

Roger Williams

February 28, 1997

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Closed Captioning and Video Description of Video Programming Implementation of Section 305 of the Telecommunications Act of 1996 Video Programming Accessibility	MM Docket No. 95-176

AFFIDAVIT OF CHRISTOPHER R. MURVIN

1. I, Christopher R. Murvin, am Senior Vice President, Legal and Business Affairs, and Secretary, of The Golf Channel ("the Network"). My responsibilities include serving as general counsel to the Network. In this capacity, I am familiar with all aspects of The Golf Channel's business operations.

2. The purpose of this affidavit is to provide information to the Federal Communications Commission ("Commission") in response to the Notice of Proposed Rulemaking ("NPRM") issued in the captioned matter concerning closed captioning.

3. The Golf Channel launched on January 17, 1995, and is currently available to approximately 8 million subscribers in the United States. Of these, approximately 7.3 million (91 percent) are cable television subscribers and 700,000 (9 percent) are DBS subscribers. As a recently launched niche programming network with relatively low subscriber penetration, The Golf Channel will be significantly and adversely impacted by the closed captioning regulations

proposed by the Commission.

4. In its NPRM, the Commission proposes to place legal responsibility for compliance with captioning requirements on multichannel video programming distributors ("MVPDs") and broadcasters. In reality, however, as the Commission has recognized, the brunt of the Commission's proposed captioning requirements will be borne by programming networks. And yet, start-up networks such as The Golf Channel, who are struggling to obtain carriage on these MVPDs, can least afford the enormous cost of the Commission's proposed captioning requirements. Unlike large, established broadcast and cable programming networks, start-up networks such as The Golf Channel are struggling to increase subscriber penetration to generate revenues necessary to become and remain commercially viable. Given the limited revenues available to start-up networks, any funds required to caption programming would necessarily be diverted from funds presently dedicated to the creation and acquisition of diverse, quality programming. Thus, captioning requirements would result in a reduction in the overall quality and quantity of new networks' programming, and ultimately interfere with new networks' ability to increase subscriber penetration to the levels necessary to sustain their operations. Moreover, if the Commission's proposed rules were adopted, start-up networks such as The Golf Channel could not simply choose to forego immediate captioning of their programming, since MVPDs, in making their channel selections, will naturally favor those programming entities that have high percentages of captioned programming.

5. Below, I will address the following points:

a. the nature of the programming carried on The Golf Channel, and the decisions involved in targeting this niche;

b. the investment necessary to launch and thereafter operate The Golf Channel;

c. the fundamental importance of widespread penetration to The Golf Channel's ability to become and remain commercially viable; and

d. the profound impact on The Golf Channel that would be caused by application of the Commission's proposed closed captioning rules to low-penetrated, start-up networks such as The Golf Channel.

The Golf Channel And Its Programming

6. There are presently over 300 programming networks competing for carriage on the nation's MVPDs, approximately 135 of which are national basic cable networks like The Golf Channel. In order to attract and retain subscribers, niche programmers must target a segment of the population whose programming needs have not yet been adequately filled, and provide programming of the type, quantity and quality that their viewers desire.

7. The Golf Channel is a niche programming network that was created to meet the needs and interests of golf enthusiasts. The Golf Channel thoroughly studied its potential audience and its viewing needs,[1] and determined that the golf niche was undeserved. No other programming network offers the breadth, depth or quality of coverage of the game of golf, as is provided by The Golf Channel.

8. The Golf Channel is a single-feed network that delivers programming on a 24-hour basis. The Network will offer a total of 8,760 hours of programming in 1997, nearly double the

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[1] The Golf Channel's demographic research reflects that there are approximately 25 million regular golfers in the United States, 73.6 percent of whom subscribe to cable television. In addition, there are at least 15 million television viewers who frequently watch golf on television even though they do not regularly play the game.

amount delivered by any of the major broadcast networks.

9. Approximately 6,400 hours, or 73 percent, of our total 1997 programming will be newly produced programming. Examples of some of the new programming currently available on The Golf Channel are "The Golf Channel Academy," which provides instruction from some of the world's best teaching professionals, including segments devoted specifically to young golfers; and "Profiles of a Pro," which provides subscribers with a look at the real lives of golf professionals. Other examples include "Golf Central", "Leaderboard Report", "Viewer's Forum", and "Golf Channel Academy Live."

10. Approximately 2,240 hours, or 27 percent, of the total programming that the Network will deliver in 1997 will be previously published ("library") programming. This is high-quality programming attuned to the specialized viewing needs and interests of our viewers. Examples include classic replays of archived Masters, British Open, PGA Championship, and U.S. Open tournaments, and selections from among the best of The Golf Channel's in-house productions.

11. Golf tournament coverage will comprise approximately 2,520 hours, or 29 percent, of The Golf Channel's total programming in 1997. About one-third of the Network's tournament coverage will be transmitted live, and the remaining two-thirds will be repeated. The Golf Channel will cover over 70 tournaments world-wide, none of which are covered by any other broadcast or cable programming network in the United States. This includes coverage of tournaments in remote locations around the world, such as Dubai, United Emirates; Sun City, South Africa; Cheju Island, South Korea; and New South Wales, Australia. In addition to the major professional tours (*e.g.*, PGA, LPGA, and Senior PGA), The Golf Channel covers other

professional golf tours that receive no coverage from the major networks, including the Nike Tour, the PGA European Tour, and the PGA Tour Australia.

12. Live programming will comprise approximately 1,160 hours, or 13 percent, of The Golf Channel's total programming in 1997. As noted above, about one-third of our tournament coverage is transmitted live. Another example is "Golf Central," a 30-minute news program that is transmitted from The Golf Channel's studios on a nightly basis. "Golf Central" is only partially scripted and provides up-to-the-minute golf news and features, and exposure to some of golf's overlooked enthusiasts, such as children and minorities. The Golf Channel also offers two live, unscripted call-in programs on a weekly basis: "Golf Talk Live," on which subscribers can talk one-on-one with golf legends, such as Arnold Palmer, and current tour stars, such as Ben Crenshaw and Annika Sorenstam, and "Viewer's Forum," on which subscribers can discuss current golf issues with the show's hosts and guests.

13. Some of the programming offered by The Golf Channel is predominantly graphic in format. For example, "The Leaderboard Report," also transmitted live, is a 15-minute program that transmits all the scores from the major tours and the top finishers from other tours, as well as tournament highlights. Moreover, the overwhelming majority -- over 97 percent -- of The Golf Channel's programming is unscripted.

Investment To Launch And Operate A Quality Programming Network

14. Launching a quality programming network requires a tremendous financial investment. It is expected that by the time The Golf Channel achieves break-even, it will have invested at least $135 million. A principal element of this investment is the Network's programming, which is of a particularly high quality. The Golf Channel pays substantial rights

fees for tournament coverage. Moreover, The Golf Channel is committed to maximizing the quality of every aspect of its programming. For example, The Golf Channel's professional golf instructors are among the best in the world. Its coverage of tournaments includes distant locations throughout the world. And The Golf Channel's production facility is a $10 million state-of-the-art, all digital studio operated by highly talented and experienced programming, production and operations personnel. As a result, The Golf Channel's production, quality and content equals or exceeds broadcast and established cable network standards. Production costs alone for one hour of original programming on The Golf Channel typically exceed $15,000, and can run to as much as $70,000. These, and other, attributes account not only for the widely-acclaimed quality of the Network, but also for the immense start-up and operating costs that have been incurred by the Network.

Distribution And Revenues Necessary For Commercial Viability

15. Basic cable networks depend on a combination of affiliation fees and advertising revenues to attain commercial viability. The Golf Channel's projections show that it must obtain distribution of 20 to 30 million subscribers on cable systems and other MVPDs before it will turn the corner to profitability. This is a particularly daunting task for a niche programming network like The Golf Channel, whose target audience is far narrower than those of general entertainment networks. Consequently, any condition that further restricts the Network's ability to gain, or retain, carriage on MVPDs and generate revenue from affiliation fees jeopardizes the Network's chances of survival.

16. Distribution is pivotal in generating not only affiliation fees, but also advertising revenue, which is also directly tied to subscriber penetration. The Golf Channel needs to acquire

annual advertising revenues in the $30 million range to be commercially viable. However, until The Golf Channel achieves a penetration of at least 10 million subscribers, generally, the only advertisers that will purchase time on The Golf Channel are industry-specific advertisers such as golf equipment manufacturers, and high-end advertisers such as luxury automobiles. Yet, the pool of industry-specific advertisers is small and high-end products advertise less frequently. To gain access to volume advertisers, such as soft-drink companies, household product companies, and mid-priced automobiles, the Network must obtain penetration on the order of at least 15, and in most cases 20, million viewers. Only then will the Network achieve distribution capable of generating a sustained level of advertising revenues sufficient to make the Network commercially viable over the long term.

17. The Commission's proposed closed captioning rules will adversely impact The Golf Channel in any of several different ways. As explained below, the Network will be forced either to reduce the quantity or quality of its programming in order to free up funds to pay for the substantial costs of captioning, or simply decline to caption any significant amount of programming. Any of these scenarios will make it even more difficult for The Golf Channel to gain carriage on cable systems. The Golf Channel's distribution will falter, and the Network will be unable to grow the subscriber base necessary to produce advertising and affiliation revenues sufficient to sustain the Network.

Impact Of The Commission's Proposed Captioning Rules On The Golf Channel

18. Even though the Commission's proposed captioning rules place the legal responsibility for captioning on MVPDs, the Commission has recognized that programming networks such as The Golf Channel will be forced to bear the cost of captioning. Indeed, start-

up, niche programming networks such as The Golf Channel, over which MVPDs have tremendous bargaining power (as opposed to highly-penetrated, well-established networks, such as ESPN),[2] will inevitably be forced to bear the brunt of the proposed captioning requirements.

19. The Commission estimates that the cost to caption prerecorded programming is between $800 and $2,500 per hour, the hourly cost for captioning live programming is between $120 and $1200, and the cost to reformat captions is between $350 and $450 per hour.[3] Using conservative rates of $1,500 per hour for prerecorded programming, $660 for live captioning, and $400 for reformatting,[4] The Golf Channel estimates that the cost to caption its 1997 programming line-up would be as much as $2 million, which is nearly 7 percent of the Network's programming budget for 1997. Even if phased-in over the Commission's proposed eight-year transition period, the cost of captioning the Network's programming will be nearly $9 million,[5] which is 7 percent of the entire investment in the Network. Indisputably, the financial strain that mandated captioning will place on The Golf Channel will be staggering.

20. Start-up networks such as The Golf Channel, however, are in the worst position

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[2] Start-up, niche programming networks such as The Golf Channel inherently cater to smaller audiences than general programming networks such as CNN, ESPN, HBO or Disney, and have yet to achieve viewer loyalties on par with established networks that have had years to develop strong followings.

[3] NPRM ¶¶ 18, 20, and 22.

[4] If required to caption, the Network would provide quality captioning that is consistent with the overall high quality of its programming. Thus, the Network conservatively estimates that its hourly captioning costs would exceed the Commission's base-level hourly estimates, but fall well short of the high-end estimates.

[5] Computed in the following manner: $9 M = ($2 M x 1/8)[for Year 1] + ($2 M x 1/4)[for Year 2] + ($2 M x 3/8)[for Year 3] + ($2 M x 1/2)[for Year 4] + ($2 M x 5/8)[for Year 5] + ($2 M x 3/4)[for Year 6] + ($2 M x 7/8)[for Year 7] + ($2 M x 1)[for Year 8]. This analysis conservatively assumes that captioning requirements would be phased-in evenly over eight years.

to absorb the tremendous cost of the proposed captioning rules. Start-up networks, operating at a loss for a number of years, will be forced to divert scarce funds from the creation and acquisition of new and original programming, resulting in an overall reduction in the quality and quantity of the networks' programming. The Golf Channel may be required to curtail its coverage of golf tournaments. For instance, a 7% reduction in our tournament coverage would mean that The Golf Channel could cover 5 fewer tournaments each year. We may also be forced to rely on lesser quality crews in covering these events or to reduce the number of camera and/or sound locations used to cover these events. In addition, we might be forced to decrease the amount of first-run programming on the Network and rely more heavily upon repeated programming. Any of these will result in decreased affiliate and subscriber satisfaction and will impede the networks' ability to increase penetration to the levels necessary to become and remain commercially viable.

21. Captioning would be particularly burdensome, expensive, and an inefficient use of scarce resources for the certain programming on The Golf Channel. For example, it is likely that real-time "stenocaptioning" technique would be required to provide closed captioning for the Network's substantial amount of live programming. But as the Commission has recognized, the pool of qualified and trained real-time stenocaptioners is very limited. In a letter recently received by The Golf Channel, an expert on this issue states that there only about 150 real-time captioners and that it typically takes a person at least five years to become proficient. *See* Exhibit 2, Letter from Image Logic Corp. dated February 17, 1997. This situation is likely to be exacerbated as more programmers are required to provide captioning. Moreover, the Network's live programming has very limited repeat value, *i.e.*, "shelf life." Thus, devoting substantial

resources to captioning this material would be particularly inefficient. Finally, closed captioning would add much cost, but little additional value, to The Golf Channel's programming that is largely visual in nature, *i.e.*, tournament coverage, or graphical in nature, *i.e.*, "The Leaderboard Report."

22. Nor will it be possible for The Golf Channel to pass along the enormous cost of captioning to MVPDs in the form of increased affiliation fees, for MVPDs' carriage decisions are price elastic, and price increases due to closed captioning costs would make The Golf Channel less attractive to MVPDs compared to larger, better-established profitable networks that would be able to absorb all or a significant part of the cost of closed captioning. Without doubt, price increases spurred by required closed captioning would further retard The Golf Channel's ability to maintain and increase its penetration. Nor can advertising rates simply be increased. To do so would simply drive advertisers to other networks and/or other media. As a result, funds needed to provide captioning would necessarily come out of the Network's programming budget.

23. Similarly, The Golf Channel cannot force its program suppliers to absorb captioning costs. The programming purchased by The Golf Channel is unique and is available only from a limited number of sources. If The Golf Channel's suppliers are forced to caption, they will simply pass along these increased costs in the form of price increases, which The Golf Channel will have to absorb.

24. Yet, if start-up networks such as The Golf Channel do not caption a substantial portion of their programming, they will be severely disadvantaged in their ability to compete for scarce channel capacity. MVPDs, seeking to fill their few remaining channels, will naturally give preference to those networks that will help satisfy the MVPDs' legal responsibility for meeting

captioning quotas. MVPDs will be reluctant to drop existing channels that have developed subscriber loyalty, even if those channels do not have substantial amounts of captioned programming. Thus, MVPDs will look to new networks to fill their captioning quota requirements now and in the future.

25. Larger, more established networks will have the resources to caption significant amounts of their programming. Thus, the Commission's proposed rules will have the undesirable and unintended effect of assisting in the entrenchment of established networks, while diverse, niche networks are further hindered in their ability to gain carriage. The proposed rules therefore threaten overall diversity in programming.

26. Not only will the proposed captioning requirements impede The Golf Channel's ability to increase subscriber penetration, they will place the Network at serious risk of being displaced (or "bumped") from MVPDs on which it is presently carried. For if the Network is forced to reduce either the quality or quantity of its programming, or to caption less programming than other networks, it is highly likely that the Network would be bumped from systems and replaced by more established networks that are financially better able to substantially caption their programming and to do so without any reduction in the quality or quantity of that programming. The Golf Channel would not be able to recover from the adverse impact that decreased penetration would have on its ability to effectively market its programming and sell its advertising time. Such a fate would not only destroy the nearly $135 million investment in the Network by over 80 persons and institutions, but would also jeopardize the jobs of The Golf Channel's 220 employees.

27. Given the enormous costs of producing and acquiring new and original

programming, most networks rely heavily on library programming in their formative years. The Golf Channel is no exception, as high-quality library programming targeted to the meet the specialized needs and interests of our subscribers constitutes approximately 27 percent of our programming. These are not merely tired re-runs of programs that television viewers have seen numerous times before. Instead, they represent the best of The Golf Channel's in-house productions and classic footage of some of the greatest golf tournaments of all time -- coverage that in some cases has not been available to viewers in decades. The Golf Channel would be extraordinarily burdened by a requirement that a significant amount of this library programming be closed captioned within the Commission's proposed transition period. Indeed, such a requirement may force The Golf Channel to forego this distinctive and diverse programming in favor of captioned programming that is already widely distributed -- at a direct cost to our overall quality and diversity of programming.

28. The Golf Channel appreciates the benefits of captioning and supports the worthy goal of improving access by persons with hearing disabilities to video programming. Indeed, a new programming network such as The Golf Channel has a strong market-based incentive to expand its distribution as much as possible and appeal to as many viewers as possible, including those with hearing disabilities. However, the Commission must recognize the economic plight of start-up networks for whom captioning is simply not commercially feasible at the present time. The Golf Channel looks forward to the day when it will be financially capable of making captioned programming available to our valued subscribers, of whom persons with hearing disabilities constitute a sizeable portion. Unfortunately, given current market conditions and captioning costs, this will not occur until the Network reaches the minimum level of distribution